

This case is before the Board for the second time. By decision dated March 22, 1996, the Board reversed a May 11, 1993 Office decision reducing appellant's compensation based on her

projected earnings in a selected position.¹ The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

Following the Office's May 11, 1993 decision, appellant remained off work. She received total disability compensation on the periodic rolls.

In an April 12, 2001 report, Dr. David L. Wood, a second opinion physician and Board-certified orthopedic surgeon, opined that appellant could perform full-time work with restrictions.² Dr. John C. Steinmann, an attending osteopathic physician and Board-certified orthopedic surgeon, affirmed these restrictions on March 26 and April 8, 2002. He submitted progress notes through December 2002 diagnosing degenerative disc disease at L5-S1 with left-sided radiculopathy.

The Office referred appellant for vocational rehabilitation services in late 2001. In December 2005 appellant completed a three-year training program in medical billing and data processing. The vocational rehabilitation counselor identified the positions of data entry clerk and billing clerk as within her physical and vocational capacities. April and June 2006 labor market surveys showed that entry level billing clerk positions were reasonably available in appellant's commuting area with wages of \$11.06 an hour. The counselor provided job ads to appellant and made several employer contacts.

In a June 26, 2006 letter, the Office proposed reducing appellant's compensation based on her ability to earn \$442.40 a week in the selected position of billing clerk. Appellant responded by July 20, 2006 letter, contending that she did not have adequate job placement assistance and that the Office failed to follow its procedures.

By decision dated July 27, 2006 and reissued on August 8, 2006, the Office reduced her compensation effective August 6, 2006 to reflect her wage-earning capacity.

Appellant requested an oral hearing, held on December 13, 2006. At the hearing, she contended that the vocational counselor did not find her a clerk position. Instead, appellant found a job as a health aide. Her duties entailed frequent heavy lifting. Appellant submitted copies of her resume, transcript, course catalogs and internet job announcements.

By decision dated and finalized February 23, 2007, the Office affirmed the August 8, 2006 wage-earning capacity decision.

In a February 21, 2008 letter, appellant requested reconsideration. She reiterated prior allegations of inadequate placement assistance and Office errors. Appellant submitted copies of

¹ Docket No. 94-1162 (issued March 22, 1996). The Office accepted that on December 17, 1986 appellant, then a 34-year-old commissary worker, sustained a low back injury when she slipped and fell. It placed her on the periodic rolls effective March 14, 1987. On May 4, 1987 appellant underwent a left-sided L5-S1 laminotomy, foraminotomy and discectomy. Medical evidence in 1990 indicated that appellant could perform full-time limited-duty work. Appellant participated in vocational rehabilitation in 1991.

² Dr. Wood proscribed bending, stooping, twisting, pushing and pulling. He limited lifting to 25 pounds and reaching above shoulder level to one hour a day.

transcripts, course catalogs and job ads previously of record. She also submitted an August 10, 2007 report from Dr. Steinmann, noting a recent, improving exacerbation of low back pain. Dr. Steinmann encouraged appellant to use proper body mechanics while lifting. He stated that appellant's underlying back condition remained permanent and stationary.

By decision dated May 23, 2008, the Office denied reconsideration on the grounds that appellant did not submit new, relevant evidence or substantive legal questions. It found that appellant's February 21, 2008 letter and additional evidence were duplicative of evidence previously of record.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁶ Appellant need only submit relevant, pertinent evidence not previously considered by the Office.⁷ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁸

ANALYSIS

The Office accepted that appellant sustained a lumbar injury requiring an L5-S1 discectomy. Effective August 6, 2006, it reduced appellant's compensation based on her ability to earn wages in a selected clerk position. Following an oral hearing, the Office affirmed the reduction by February 23, 2007 decision. In a February 21, 2008 letter, appellant requested reconsideration. She repeated prior arguments and submitted copies of academic and job search documents previously of record.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b). *See also T.E.*, 59 ECAB ____ (Docket No. 07-2227, issued March 19, 2008).

⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁷ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

⁸ *Annette Louise*, 54 ECAB 783 (2003).

Appellant's February 18, 2008 letter is repetitive of her prior arguments which were previously rejected. The August 10, 2007 report from Dr. Steinmann, an attending orthopedic surgeon, noted appellant's underlying condition remained unchanged from prior reports. The other documents are duplicative of previously considered evidence. Evidence or argument which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.⁹ Appellant's letter, Dr. Steinmann's report and the associated documents do not require reopening the record for a merit review.

Appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Act. She did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 23, 2008 is affirmed.

Issued: June 3, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁹ *Denis M. Dupor*, 51 ECAB 482 (2000).